IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 23 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

VIRAMBHAI DANABHAI

Appearance:

MR ARUN H MEHTA for Appellants

Respondent served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/01/2001

ORAL JUDGEMENT

1. The present respondent Virambhai Danabhai, resident of Rajkot, filed Regular Civil Suit No. 867 of 1982, in the Court of the Second Joint Civil Judge (JD), Rajkot, stating that the present respondent - original

plaintiff has got his house property situated at Plot No.5 of Survey No. 461-5 situated on Raiya Road within the city of Rajkot and there is a cement shed in front of his house. The plaintiff further contended that the above said cement shed was there since last so many years and that he utilises the above said shed as shop for selling milk and milk products. It was further his case that firstly he received the Notice from defendant No.2 i.e. Town Development Officer dated 20/21.8.1982 u/s 267 (1) of the Bombay Provincial Municipal Corporations Act and was informed that the construction of the shed was illegal and without necessary permission. Later on also one more Notice was given to the plaintiff u/s 267 of the Bombay Provincial Municipal Corporations Act dated 20.8.1982 that the plaintiff was required to file his explanation within four days or else the disputed portion of the land would be handed over to the police. It was further contended by the plaintiff - present respondent that Town Development Officer had no power to issue such notices, and that such notices if issued by defendant No.2 were null and void because no necessary powers were delegated to defend No.2 by defendant No.1 Rajkot Municipal Corporation. On this basis, the present respondent plaintiff asked for the declaration to the effect that the above said two notices were illegal, unconstitutional and without jurisdiction, null and void. He also prayed for a permanent injunction restraining the defendants from taking over possession of the said shed from him and handing over the same to the Police. The suit came to be contested by the present appellants original defendants by filing written statement at Exh. 13. After denying the allegation made in the plaint, it was contended that the plaintiff had constructed a shed outside the compound wall for which he had not obtained necessary permission. It was contended that the plaintiff addressed a letter to the Corporation stating that he was ready and willing to remove the shed and the matter was posted for hearing but on the day of hearing the plaintiff did not turn up. It was contended that the contention of the plaintiff that the powers to the In-charge Town Development Officer were not delegated cannot be accepted.

3. Learned Trial Judge framed issues at Exh. 30 but on request of the parties, Issue No.3 regarding legality of the notices was treated as a preliminary issue and the learned Trial Judge was pleased to come to the conclusion that the notice and the injunction orders dated 20/21st August, 1982 issued by the In-charge Town Development Officer were illegal and void. The learned Trial Judge therefore decreed the suit of the plaintiff against the

present appellants by judgment and decree dated 30th April, 1983.

4. Being aggrieved an dissatisfied with the above said judgment, the appellant filed Regular Civil Appeal in the Court of District Judge at Rajkot being Civil Appeal No. 78 of 1983. After hearing both the sides, by his judgment and order dated 6th May, 1985, learned District Judge, Rajkot, dismissed the Appeal and hence this Second Appeal by the appellants - original defendants being aggrieved and dissatisfied by the judgment and order of the First Appellate Judge, as aforesaid.

5. Learned Senior Counsel Mr. Arun H. Mehta on behalf of the appellants was heard. Notices are served on the respondents.

6. Following substantial question of law was framed by this Court :

" Whether the lower courts erred in holding that In-charge Town Development Officer was incompetent to issue the suit notice as the powers were delegated to the Town Development Officer and not to the In-charge Town Development Officer? "

7. Having heard the learned Counsel for the appellants and having perused the record with reference to the substantial question as has been framed by this Court, the legal position is well established that where a statutory duty is to be performed by a duly appointed designated officer of a certain rank and not by his subordinate, even if subordinate is temporarily performing the duties of the office of the superior, Sec. 19 of the Bombay General Clauses Act, 1904, could not, and does not, have the effect of making and appointing or substituting the subordinate in place of the superior irrespective of the language of the statute in question. The facts go to show that the notices impugned in the suit which are at Exh. 31 and 32 are undoubtedly have been issued by In-charge, Town Development Officer, Rajkot Municipal Corporation. There is no evidence on record that In-charge Town Development Officer who is empowered to perform the statutory duties as envisaged under the concerned Act. Those statutory duties are required to be performed by a duly appointed, designated officer of a certain rank and not by a subordinate. Both the courts below on this count were pleased to quash the notices impugned and passed decree in favour of the

present respondent. There is nothing in the record to take a different view with respect to the substantial question of law as has been framed by this Court than the view taken by both the courts below. The view is supported by a Division Ben decision of this Court in the matter of THE STATE OF GUJARAT vs. DHIRAJLAL AMRATLAL KANSARA AND ANOTHER, reported in 1975 (16) GLR 982 where this Court has ruled that the statutory duty is to be performed by a duly appointed designated officer of certain rank and not by subordinate. Even Sec. 19 of the Bombay General Clauses Act, 1904 would not have the effect of making and appointing or substituting the subordinate in place of superior irrespective of the language of the statute in question.

8. In this view of the matter, this Appeal is merit less and requires to be dismissed.

9. In the result, the Appeal stands dismissed with no order as to costs.

(J. R. Vora, J.)
p.n.nair